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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSIE LEE MITCHELL,

Defendant and Appellant.

F058282

(Fresno Super. Ct. No. F09900330)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Ralph Nunez, Judge.

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Wiseman, A.P.J., Cornell, J., and Kane, J.

On January 11, 2009, appellant, Jessie Mitchell, and two other men wearing ski masks and armed with handguns, broke open the front door to the house belonging to his aunt and uncle, David and Donetta Walker. After entering the house, Mitchell yelled at his cousin John Walker¹ to get on the ground. When John asked, “Is that you Jessie Mitchell,” Mitchell replied, “I’m not Jessie Mitchell, who the fuck is Jessie Mitchell?”

One intruder walked John toward the master bedroom where the three intruders broke down the door to the bedroom, pointed a gun at David, and demanded money. The men left after the Walkers gave them approximately \$5,000.

David recognized Mitchell’s voice and drove around trying to find the robbers after they left. He also called Mitchell’s father on the cell phone who informed David that a few days earlier, Mitchell told him he was going to rob David at his house.

Mitchell was interviewed by Fresno Police officers later that night and admitted robbing his uncle and aunt.

On January 14, 2009, the district attorney filed a complaint charging Mitchell with one count each of robbery (count 1/Pen. Code, § 211)² and burglary (count 4/§ 459) and two counts of home invasion robbery (counts 2 & 3/§ 211). Counts 1 through 3 alleged a personal use of a firearm enhancement pursuant to section 12022.53, subdivision (b) and that Mitchell acted in concert and entered a structure within the meaning of section 213, subdivision (a)(1)(A). Count 4 alleged a personal use of a firearm enhancement pursuant to section 12022.5, subdivision (a) and that a person other than an accomplice was in the residence when the burglary charged in that count was committed.

¹ We will refer to David, Donetta, and John Walker by their first names for purposes of clarity.

² All further references are to the Penal Code unless otherwise indicated.

On February 11, 2009, the prosecution dismissed the arming enhancement in count 1 and Mitchell pled no contest to that count in exchange for the dismissal of the remaining counts and allegations.

On March 13, 2009, during sentencing Mitchell refused to stipulate to the amount of restitution. The court then withdrew its approval of the plea agreement and reinstated the original charges and allegations.

On March 20, 2009, after the prosecutor dismissed the arming enhancement and other allegations in each count, Mitchell pled no contest to the four substantive charges in the complaint in exchange for an indicated sentence of 6 years.

On June 3, 2009, the court sentenced Mitchell to concurrent, middle terms of six years on counts 1, 2 and 3, and a stayed term of four years on count 4.

Mitchell's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) Mitchell has not responded to this court's invitation to submit additional briefing.

Following independent review of the record, we find that no reasonably arguable factual or legal issues exist.

The judgment is affirmed.